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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner, the American Society of Travel Agents, Inc. (ASTA), prays that a writ of certiorari issue to review the judgment of the U. S. Court of Appeals for the Second Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 380 F.2d 770, and is printed as Appendix A to the petition of the Civil Aeronautics Board, No. 946, and of the supplemental carriers, No. 800.

JURISDICTION

The judgment of the Court of Appeals below was entered July 20, 1967, and rehearing was denied September 29, 1967. Jurisdiction is invoked under 49 U.S.C. § 1486 (f) and 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board has the power to define "supplemental air transportation" to include the carriage of inclusive tour charter groups by supplemental air carriers.

STATUTE INVOLVED

The relevant portions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. §§ 1301 et seq., are set forth in Appendix E of the petition of the Civil Aeronautics Board in No. 946.

STATEMENT

On July 20, 1967, the Second Circuit Court of Appeals held that the Civil Aeronautics Board does not have the power to authorize supplemental air carriers to carry inclusive tour charter groups. This decision overturned an award of international inclusive tour charter authority which had been approved by the Civil Aeronautics Board and the President, and it was in direct conflict with a decision of July 19, 1966, by the United States Court of Appeals for the District of Columbia Circuit, which upheld the award of domestic inclusive tour charter authority for supplemental air carriers.

The CAB and several supplemental air carriers have filed petitions for writs of certiorari to review the decision by the Second Circuit. Nos. 946 and 800 respectively. ASTA actively participated at the CAB in the

been approved by the CAB through November 1, 1967, representing approximately 100,000 passengers, and over $11 million in air transportation revenues.[1]

The decision by the Second Circuit which overturns the CAB's grant of inclusive tour charter authority to certain supplemental air carriers for international transportation has caused a virtual abandonment of a meaningful inclusive tour charter program for international air transportation, and has tended sharply to curtail the further promotion of domestic inclusive tour charters.

Because of the direct conflict between the two circuits on an interpretation of precisely the same statute under virtually the same conditions, the CAB has recently refused to authorize certain additional supplemental carriers to conduct inclusive tour charters in international air transportation.[2] Furthermore, it has prompted a member of the CAB to state that further grant of inclusive tour charter authority should not be made to the supplemental carriers until such time as the Board's authority is clarified.[3]

Inclusive tour charters are a well-established and popular form of vacation travel in Europe. They have developed a new market of their own there, with little diversion of the traditional scheduled traffic.[4] The record

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[1] Petition in No. 800, p. 12. Since November 1, we are advised by the CAB, five additional inclusive tour charter programs have been approved, involving a number of flights and passengers.

[2] CAB Order E-25928, Nov. 7, 1967.

[3] Dissent by Member Gillilland in Reopened Supplemental Air Service Proceeding, CAB Order E-25535, Aug. 16, 1967.

[4] The Examiner in Docket 13795 found that the amount of ITC traffic departing from Britain increased from 249,000 in 1960 to 1,050,000 (estimated) in 1964. Examiner's Opinion p. 57, R. 10074. He found that there was no showing that this traffic had "had any material adverse impact upon the scheduled carriers . . . ." Id. p. 62, R. 10079.

shows in detail how these charters work in England, with the blessing and supervision of the British aviation authorities.[5] The same concept is well-established in the field of passenger bus transportation in this country.[6]

The American Society of Travel Agents represents more than 2,400 travel agencies throughout the United States and Canada. Among its members are many tour operators. The tour operators, along with the supplemental air carriers and potential travelers, constitute the elements necessary to make an inclusive tour charter program work, since the effective promotion of inclusive tour charters either domestically or internationally requires the support and cooperation of travel agents, including tour operators and retail agents. Effective support and cooperation is impossible until the legal status of inclusive tour charters is clarified. This can only come from a review by this Court of the decision of the Second Circuit.

For the foregoing reasons, ASTA urges the Court to grant this petition for writ of certiorari.

Respectfully submitted,

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December 27, 1967

[5] Id., R. 10073-10082.

[6] *National Bus Traffic Association* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), *affirmed* 352 U.S. 1020.